

**VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
SEPTEMBER 10, 2010**

TIME AND PLACE: The meeting of the Regulatory/Legislative Committee of the Board of Dentistry was called to order at 9:05 a.m. on September 10, 2010 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Myra Howard, Chair

MEMBERS PRESENT: Jacqueline G. Pace, R.D.H.
Robert B. Hall, Jr., D.D.S.
Herbert R. Boyd., D.D.S

STAFF PRESENT: Sandra K. Reen, Executive Director
Huong Vu, Administrative Assistant

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

QUORUM: All members of the Committee were present.

PUBLIC COMMENT: Mr. Paul Werbin, CRNA, with the Virginia Association of Nurse Anesthetists, stated that CRNAs are often being called into dental offices to administer sedation and anesthesia and that Dentistry's regulations limit them to working only with dentists who are trained to administer themselves. He asked that CRNA's be allowed to practice in all dental settings regardless of the training of the dentist to provide consistency with their practice in medical settings and with the revised American Dental Association (ADA) guidelines.

MINUTES: Ms. Howard asked if the members had reviewed the minutes of the January 22, 2010 meeting. Dr. Boyd moved to accept the minutes. The motion was seconded and passed.

**STATUS REPORT ON
REGULATORY
ACTIONS:**

Recovery of Disciplinary Costs – Ms. Yeatts reported that these regulations are at the Governor's office for approval.

Registration of Mobile Clinics – Ms. Yeatts reported that these regulations are the replacement of the emergency regulations that will expire on January 7, 2011. They are at the Governor's office for approval. She advised that there is no longer enough time to complete the regulatory process before the emergency regulations expire so there will be a period when no regulations will be in force.

Registration and Practice of Dental Assistants – Ms. Yeatts reported that these regulations are also at the Governor's office for approval. She added that once they are approved, they will be effective 30 days after publication in the Virginia Register of Regulations.

Periodic Review; Reorganization of Chapter - Ms. Yeatts reported that the NOIRA was issued on August 2, 2010 and the comment period ended on September 1, 2010.

DENTAL ASSISTANT II REGULATIONS:

Education Requirements for Pulp Capping Procedures - Ms. Yeatts stated there is a need to amend these regulations to address the education requirement for pulp capping procedures but such an amendment cannot be advanced until the regulations are final. Ms. Reen advised that action was needed so that education programs, which are starting, know to address pulp capping procedures in the training. She said the Board needs to be in a position to act as soon as possible to amend the regulations and it could assign approval of a fast track action on this proposed amendment to the Executive Committee. Mr. Casway advised that the Board could adopt the revision in principle for fast track action when the regulations are final and could also at that time issue a guidance document. Dr. Hall recommended that the language "and pulp capping procedures" also be added to training requirement for amalgam restorations in 18VAC60-20-61(B)(2)(a). This addition was agreed to by consensus. Dr. Hall then moved to advance the proposal as amended to the Board. The motion was seconded and passed.

PERIODIC REVIEW OF REGULATIONS:

Comments on the NOIRA – Ms. Reen noted that the Virginia Association of Nurse Anesthetists submitted the only comment received. She stated this comment will be considered as regulatory language is developed. Dr. Hall asked Mr. Werbin to address the supervision requirements and was advised that CRNA's are not required to practice under supervision, they practice under agreements with doctors or dentists which are reviewed periodically. Dr. Boyd asked about who is responsible for the medications and equipment used and was advised that it varies from practice to practice. Mr. Werbin also stated in response to a question by Ms. Howard that the CRNA practice protocol is developed specific to each practice setting.

VDA Recommendation for Mobile Clinics – Ms. Reen stated that the VDA is asking the Board to amend these regulations to require that the name of the dentist that has agreed to provide follow-up care is provided on the patient information sheet. She said that she can modify the application instructions to give guidance to this effect since the current regulations require referral when follow-up care is needed. She added that amending the regulations to clarify that the required referral information should be the dentist who has agreed to provide follow-up care might also be considered. Ms. Yeatts recommended that the VDA be encouraged to resubmit this comment when the proposed final regulations are published for public comment. Ms. Reen agreed to do this.

Dental Labs- disclosure of the materials used – Ms. Reen noted that in response to concerns addressed nationally about substandard materials being used in overseas labs, Dr. Levin obtained the information in the agenda package about other state boards' oversight of dental labs. She said that the Committee was asked to review these

materials to decide if action should be taken in Virginia. She also noted that the Board has the authority to inspect dental labs, but does not have regulatory authority over the labs to address the use of substandard materials. She added that the Board does have the legal authority to prescribe the work orders dentists use to order work from a lab including the specification of materials.

Dr Boyd asked if the Board should be pursuing legislation for the regulation of labs. Mr. Casway noted that the Board's authority is limited to Virginia so such authority would not address overseas or out of state labs. There was general agreement that it is the responsibility of the dentist to ensure that the materials specified are delivered.

Ms. Howard recommended creating a template with the required content and allowing the format to be modified or augmented. It was noted that labs generally require submission of their own forms and may not accept a Board prescribed form. Mr. Casway indicated that the form could be issued as a guidance document until it can be addressed in regulation. By consensus, the Committee agreed to develop a proposed form. Dr. Hall agreed to work with a lab tech in his area and Ms. Reen to draft a proposal.

Mr. Casway advised that the Board would need to amend the statute if it wants to regulate dental labs. After much discussion pro and con, the agreement was to get more information from other states that currently regulate dental labs.

Ad Hoc Workgroup on Advertising Recommendations – Dr. Boyd reported that the discussion of the Ad Hoc Work Group on August 20, 2010 was spirited and emotional. He added that the group concluded the current law and regulations are sufficient but that educational information and stronger Board actions are needed. The recommendations agreed to by the group were:

- **Guidance Document 60-10 should be amended.** Ms. Reen stated that the Committee can recommend acceptance, denial or modification of the proposals. Following discussion of the concerns of the group and Mr. Casway's explanation of the legal standard for probable cause review, the Committee agreed by consensus:
 - to recommend striking the marked through sentence on anonymous complaints in the section "Making a Probable Cause Decision", item 1.
 - not to recommend adding the bold underlined language on clear and convincing evidence in that same section.

In regard to section B. Guidelines for Offering a Confidential Consent Agreement, item 1, Ms. Pace moved to recommend retaining the current language on offering a CCA for subsequent violations. The motion was seconded and passed with Dr. Boyd abstaining.

In regard to section C. Guidelines for Imposing Disciplinary Sanctions, items 2.a and b, Ms. Pace moved to recommend adding the proposed language "per violation, a reprimand" and "subsequent". The motion was seconded and passed with Dr. Boyd abstaining.

- **Board members should resume the review of advertising cases.** Ms. Reen reported that out of the 1,355 cases closed in calendar years 2008 and 2009, 43 cases addressed advertising. She further reported that the decisions on the 43 cases were to close 2 with violations, 3 as undetermined, 8 with confidential consent agreements, 6 with advisory letters and 24 no violation. She stated that the Board assigned probable cause review to her as one strategy to first reduce and then to prevent a backlog of standard of care cases. She indicated that, given the caseload is currently managed in compliance with the performance goals, the decision on this recommendation is completely discretionary. Ms. Pace stated she favors keeping the current process and the committee agreed by consensus.
- **A guidance document and information on cases should be provided to licensees.** There was consensus that a guidance document should be developed, with Mr. Casway recommending a question and answer format. It was also agreed that data on case outcomes should be included in **BRIEFS**.

NEXT MEETING:

It was agreed that the Committee would meet on October 29, 2010 and that Ms. Howard and Ms. Reen will propose dates for subsequent meetings.

ADJOURNMENT:

Ms. Howard adjourned the meeting at 12:15 p.m.

Myra Howard, Chair

Sandra K. Reen, Executive Director

Date

Date